IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRL.A.No. 819 of 2000()

CC.15/1997 of ENQUIRY COMMR. & SPL.JUDGE, KOZHIKODE
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APPELLANT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.P.SUKUMARAN

RESPONDENT/ACCUSED:

K.K.BALAN, S/o. CHANDU CHETTIAR,
KUNIYAL KARUTHA HOUSE,
THIRUVANGADU P.O., THALASSERY.

BY

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU,J

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CRL.A.No.819 of 2000

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Dated this the 13th day of July,2007

JUDGMENT

The appellant is the State. The appeal is filed seeking to set aside the order of the Enquiry Commissioner and Special Judge in C.C.No.15/97. The matter related to the alleged misappropriation of the amounts by the accused who was the cashier of the Electrical Major Section, Mananthavady. The total amount involved is in respect of 12 receipts from the consumers worth Rs. 9428.25.

The evidence adduced consisted of the testimony PWs. 1 to 17 Exts. P1 to P54 and Ext. D1. The trial court found that the accused is entitled to the benefit of doubt. The prosecution could not establish the case beyond reasonable doubt that the accused is guilty of the offence alleged under Section 13(c) and (d) read with section 13(2) of P.C.Act 1988 and Section 409 and 477(A) of the I.P.C. It is noticed by the court below that it has come out in evidence that there was one more cashier in the same office and the amounts collected are with respect to the

consumers from three centers in Mananthavady section, ie., Mananthavady, Panamaram and vellamande and that the same consumer numbers are in existence in the three centers and that the prosecution has not adduced any positive evidence to establish that the invoices involved in the matter is specifically with respect to Mananthavady centre. It is also noted that the receipts did not contain the dates, on which the payments are made. Further, the consumers when examined have not stated that it is the accused who collected the amount. It is also noted that the dates of the receipts are not mentioned in some of them and further, it is found that with respect to certain receipts wherein the dates are mentioned, the accused was on leave on the particular dates. Further there was no signature on the receipts and the writings were not established to be that of the accused in the impugned receipts. The facts vide Ext P42 report is that no definite conclusion as to the identity of the hand writing can be had. It was in the above circumstances that the Special Judge has found that the accused is entitled to be acquitted. In the circumstances noted above and considering the constraint of the Appellate Jurisdiction with respect to order of

acquittal, I find that it would not be proper to set aside the order of the court below.

In the circumstances, the appeal is dismissed.

K.R.UDAYABHANU,JUDGE

dvs